Mr. Tan, for the trustees, raises two objections.

First he says (and this is not contradicted) there has been no appropriation in accordance with the directions of the Will to meet the various monthly legacies for life provided for in clause 8 of the Will. That being so, the annuities are chargeable on the whole estate and the Plaintiff's legacy therefore not being indefeasible, is not within the rule in *Saunders* v. *Vautier*.

So far as this point goes, these proceedings might be adjourned with a view to the proper appropriations being made, but this as it turns out would not assist the Plaintiff.

Mr. Tan's second point is that as the trustees have full discretion to postpone a sale and conversion there are no assets upon which the rule in *Saunders* v. *Vautier* can operate, for where land is demised to trustees upon trust for sale, with power to postpone, even a person who is indefeasibly entitled to a share of the proceeds of sale cannot insist on an immediate exercise of the trust for sale against the discretion of the trustees nor can he call for a conveyance of the land (Theobald, 8th edition pages 500-1). This is clearly laid down in *Re Horsmaill* (1909) 1 Ch. 631 and in *Re Kipping* (1914) 1 Ch. 62. In the latter case Buckley L.J. (at page 67) said of the applicant—" his contention is that the trustees are bound to sell because he has a right to a distributive share of the residuary estate and to be paid that share. He is not, in my opinion, so entitled. The Will gives him, not a distributive share of a sum of money, but a distributive share of the income of the property so long as it remains unsold, and a distributive share of the proceeds of sale when the property is sold. There is no gift of the proceeds of sale until the property is sold, and he is not entitled to interfere with the *bona fide* exercise by the trustees of their discretion and to call upon them to sell. There is no original gift to him under which he is entitled to have the property sold now."

For these reasons I am of opinion that the Plaintiff's contention must fail. As matters stand at present I hold that the Plaintiff's share is not immediately payable and that until circumstances alter that is until there is a sale and the proper appropriations are made, she cannot get her share before the date of distribution indicated in the Will.

As to costs I think upon the whole that the solicitor and client costs of the Plaintiff be paid as to half out of the estate and as to the other half out of the Plaintiff's share. As to the Defendants' costs a similar order will go except that if the Plaintiff's share is insufficient to pay the costs directed the residuary estate as a whole will bear them.

Order Accordingly.

Solicitors for the Plaintiff—*Aubrey Davies & Co.*
Solicitor for the Defendants—
Donaldson & Burkinshaw.

Note.—The plaintiff appealed against the whole of the judgment of Murison, C.J. The Court of Appeal consisting of Burton, Terrell and Whitley, JJ., unanimously dismissed the appeal on the 23rd of November, 1932.

[ORIGINAL CIVIL JURISDICTION.]

IN RE A SOLICITOR AND ADVOCATE
and
IN THE MATTER OF ORDINANCE No. 101 (COURTS)

[SINGAPORE ORIGINATING MOTION No. 9 OF 1932]

Solicitor—Change of—new Solicitor undertaking to pay former Solicitors' bill of costs—breach of undertaking—professional misconduct—contempt of Court—application to suspend—Sec. 91 (2) (b) Ordinance No. 101 (Courts.)

Where, on a change of Solicitors, the new Solicitor gave a written undertaking to pay the costs claimed to be due from the client to the former Solicitors, failure to honour the undertaking amounted to professional misconduct and a contempt of Court. That the defaulter had a cross complaint against the former Solicitors however genuine it might be would not affect the breach of the undertaking.

The personal undertaking of the Solicitor is sufficient to enable the Court to exercise its summary jurisdiction to compel him to carry out the undertaking on the application of the person to whom it is given.

In re a Solicitor, Ex parte Hales (1907) 2 K.B. 539 and *In re* F.C., (1888) W.N. 77 followed.

MOTION by the Singapore Bar Committee for an order that the Respondent do shew cause why he should not be suspended from practice as an Advocate and Solicitor. The facts appear from the Judgment of Murison, C.J.

Knowles, (*Withers-Payne* with him) for the Singapore Bar Committee.

Johannes, for the Respondent.

Cur. Ad. Vult.

MURISON, C.J.—This is a motion by Mr. Knowles, of counsel on the part of the Bar Committee of Singapore, for an order that the Solicitor and Advocate therein named show cause why he should not be suspended from practice.

The charges against the respondent to the motion are brought under section 91 (2) (b) of the Ordinance No. 101 (Courts). They are first that he has been guilty of improper conduct in regard to a sum of $100.30 arising out of certain dealings with Messrs. Campbell & Company, Advocates and Solicitors, and secondly by virtue of an agreement made by him in regard to costs of an action.

I deal with the first charge first.

On September 7th, 1931, the Respondent was instructed by one Kolandan to appear on his behalf in a District Court Summons in place of Messrs. John G. Campbell & Co., and on the same day the Respondent was instructed to appear on

behalf of the same client in a Police Court case, in which he was complainant, instead of Messrs. John G. Campbell & Co.

On the 7th of September, 1931, Messrs. John G. Campbell & Co agreed to the change of solicitors, enclosed their bills of costs and said that upon receipt of the balance of $100.30 they would hand over the files in the matter to the Respondent. On the 29th of September, 1931, the Respondent wrote to Messrs. John G. Campbell & Co. asking the latter to send the papers in the District Court case "on our undertaking to pay your bill within one week."

On 30th September, 1931, Messrs. John G. Campbell & Co. sent the papers "on the undertaking that you will pay our bill within one week."

On the 9th of October, Messrs. John G. Campbell & Co. wrote to the Respondent reminding him that he had not complied with the undertaking to pay within one week and reminding him that the amount due was $100.30.

On the 9th of October the Respondent replied that his client was sick in hospital, and that he would collect the amount and send it to Messrs. John G. Campbell & Co. as soon as his client came out of the hospital. "You need not be anxious about your fees as we have undertaken responsibility for the same," wrote the Respondent.

Messrs. John G. Campbell & Co., however, were not satisfied and wrote to the Respondent pointing out that the latter's promise was unqualified, and that they did not propose to allow "any qualification to creep in at this juncture" and requested the Respondent to discharge the liability which he had undertaken. No reply being received to that letter, Messrs. John G. Campbell & Co. wrote again to the Respondent on the 20th of October, 1931, informing him that unless Messrs. John G. Campbell & Co., received a cheque by noon on the 21st they would be "compelled to take a certain course."

On the 21st Messrs. Campbell & Co. wrote to the Respondent saying that they had received no reply to their letters of the 10th and 20th and asking what the Respondent intended to do.

On the 22nd of October the Respondent wrote to Messrs. John G. Campbell & Co. acknowledging receipt of their letters of the 10th and 20th inst. He then said: "We regret the delay in sending you the amount, which was not intentional. We shall fulfil our undertaking to the letter."

As a matter of fact the Respondent's client had paid to him on the 13th of October, $100.30 "being costs of J. G. Campbell & Co." The receipt for this amount is produced and was attached to the Report of the Bar Committee after their Enquiry. When called before the Bar Committee the Respondent's excuse for not paying the money to Mr. Campbell was that he desired to get his costs from his client before sending the money to Mr. Campbell.

The Respondent did not pay the money to Messrs. John G. Campbell & Co. They sued him eventually and obtained judgment for the amount.

The Respondent gave the Bar Committee a written explanation of his delay of the enquiry in which he set up a cross complaint against Messrs. John G. Campbell & Co. The Bar Committee duly enquired into this and considered it unfounded, though they felt that the Respondent genuinely thought that he had some grievance against Messrs. John G. Campbell & Co. This complaint however had nothing to do with the question of the breach of the undertaking by the Respondent and appertained to matters which arose after Messrs. Campbell & Co. had sued the Respondent to judgment.

These were the facts laid before the Court on behalf of the Bar Committee in respect of the first charge.

For the Respondent it was argued that he had to deal with three cases in which his client Kolandan was concerned. These he had agreed to conduct for $250 and so, he says, he considered that he was acting for a lump sum of $350.10, debiting his client with the amount of Messrs. Campbell & Company's costs, namely $100.30. This argument completely ignores the fact that the payment of $100.30 to Messrs. Campbell & Co. was a personal undertaking by the Respondent, and also the fact that Messrs. Campbell & Co. had no concern whatever with the arrangements between the Respondent and Kolandan.

Then it is said that the Respondent having given his undertaking, Messrs. Campbell & Co. were sure to get their money. The breach of the undertaking for several months is ignored, and so is the fact that the Respondent, not his client, was reponsible for payment.

Then it is said that the Respondent had no intention of depriving Messrs. Campbell & Co. of their costs. But it is not a question of intention. It is a question of professional etiquette in honouring a personal obligation.

Lastly, it is said that no solicitor and advocate of this Court has been held guilty under sections 91 and 92 of the Courts Ordinance for breach of an undertaking. As regards this it is settled law that the breach of an undertaking by a solicitor to the Court is a contempt of Court. (*In Re Coolgardie Gold Fields*, 1900, 1 Ch. 475). But such a breach made where the solicitor was acting in his private capacity is not a contempt of Court (*Ex parte Watts* (1832) 1 Dowl. P.C. 512). The former is the case here and even if it were not a contempt of Court it is still in my opinion a contempt, and a gross breach of the etiquette

of the Bar which sections 91 and 92 are designed to preserve.

I wish further to observe that it was decided in *In Re a Solicitor Ex parte the Incorporated Law Society* 63 L.J. Q.B. at page 398 that retention of money paid to a solicitor by his client for a definite purpose was professional misconduct. And further *In Re a Solicitor Ex parte Hales* (1907) 2 K.B. 539 and *In Re* F.C. (1888) W.N. 77 it was held that an undertaking given by a solicitor in his professional capacity although not given in an action, will be enforced by a summary order in the matter of the solicitor. I further refer to Cordery on Solicitors 3rd edition page 142 where the law is stated as follows:—

> "If a solicitor has received money from his client for the express purpose of paying particular fees, it is his duty so to apply it, and since a general lien cannot be set up by an agent against a specific appropriation by the principal (See *Thayer* v. *Lister*, 30 L.J., Ch. 427; 9 W.R. 360 and *per* Grove, J., L.J. 1885, 81) it matters not that the client is indebted to the solicitor; and in a gross case of this kind the Court will interfere summarily for the purpose of punishing the solicitor by suspension or otherwise (F., L.J. (1883) 352)."

In view of this and in view of the prolonged delay by the Respondent to honour his undertaking, I am of opinion that the Respondent has been guilty of grossly improper conduct in the discharge of his professional duty under section 91 (2) (b) of the Ordinance No. 101 (Courts)

The second charge against the Respondent is that he was similarly guilty through making an agreement as to costs. I do not go into the details of this charge because it is not pressed. It is an agreement which is clearly in contravention of the terms of a Notice dated 8th August, 1931, signed by the Honorary Secretary of the Bar Committee, and posted in the Bar Room of the Court. This Notice is as follows:—

> "I am directed by my Committee to draw the attention of Members of the Bar to the matter of costs in litigation. It has come to the notice of the Committee that some Members of the Bar have agreed in certain cases to accept a lump sum for costs, such lump sum being less than what the taxed costs of the action would amount to, if taxed in the ordinary course under a judgment for the amount claimed and costs. The Court has not been informed of the arrangement, and has given judgment for the amount claimed with costs, whereupon the Solicitor has taxed the costs in the usual way, and on obtaining payment, has retained the lump sum, and handed the judgment, together with difference between the amount of the taxed costs and the lump sum retained by him to the client, or has enforced the judgment himself, under the mistaken belief that a client is entitled to such sum for costs as would be allowed on taxation when there has been no agreement between a client and his Solicitor for payment of a lump sum fee to the latter. The whole purpose of awarding costs is to indemnify the successful party in respect of what he has to pay for costs, and, if a Solicitor has made an arrangement with his client for an agreed fee, it is his duty so to inform the Court, and to ask for an order for taxation limited to the amount of such agreed fee. In the opinion of my Committee, when a Member of the Bar has agreed a lump sum fee for costs, it is highly unprofessional for him to tax costs for more than his agreed fee, and, if they are so taxed, it is an offence for the Solicitor to pay the excess costs to the client, or to hand him the judgment so that he can himself recover such excess costs.
>
> It should, however, be clearly understood that the above notice refers to the costs of an action, which is quite a different matter from a fee to Counsel and the present ruling amounts to this, that, if an Advocate and Solicitor agrees to take a whole case in consideration of the payment of a lump sum to him then that lump sum is all he can recover. Of course if he merely charges a special Counsel's fee, the full taxed costs are still recoverable, but under no circumstances can any part thereof be paid to the client nor except on payment of the amount thereof by his client, should an Advocate and Solicitor hand the judgment for the full taxed costs to the client.
>
> Dated this 8th day of August, 1931.
>
> Sd. C. H. Withers Payne,
>
> Honorary Secretary."

I desire to say that this Notice in my opinion represents the law and practice in regard to the matters with which it deals, and that a breach of its provisions is likely to expose an offender to proceedings similar to those which are now before me. In the present case, as no order is sought I make none. It would appear, in fact, that the Respondent was ignorant of the Circular though in my opinion that in itself is no excuse, as it was posted in the Bar Room a year ago.

Upon the first charge which I find proved I order that the Respondent be suspended for the

period of two calendar months from today and that he pay the costs of this motion. I further on the authority of the case in the Weekly Notes and the case in (1907) 2 K.B. 539 cited above summarily order the Respondent to pay within one week the amount due to Messrs. Campbell & Co.

Order accordingly.

[ORIGINAL CIVIL JURISDICTION]

IN THE MATTER OF THE RENT RESTRICTION ORDINANCE 1921

and

IN THE MATTER OF AN APPLICATION BY LIM CHENG SWEE TO THE RENT ASSESSMENT BOARD, SINGAPORE FOR THE RE-HEARING OF THE APPLICATION OF MELANIE LEE No. 3981 of 1921.

[S'PORE ORIGINATING SUMMONS No. 113 of 1921]

Rent Assessment Board—whether a Court—power to re-hear applications—jurisdiction—Writ of Prohibition—Rent Restriction Ordinance, Ss. 9, 10 and 13.

The Rent Assessment Board is a Court. It has no power to re-hear applications except under Section 9 Sub-section 5 of the Rent Restriction Ordinance 1921.

Such powers of re-hearing only apply to applications under Section 9 of that Ordinance and not to other applications under other parts of the Ordinance.

A Writ of Prohibition will issue in a proper case to prohibit the Board from exceeding their jurisdiction.

Application by way of Originating Summons for a Writ of Prohibition addressed to the President and Members of the Rent Assessment Board to prohibit them from re-hearing an application by a Landlord for permission to eject a Tenant.

Battishill for the Applicant (the Landlord).

Koek for the Respondent (the Tenant).

The Rent Assessment Board were unrepresented.

The facts sufficiently appear from the Judgment.

BARRETT-LENNARD, J.—I am of opinion that in this case a Prohibition should issue.

The first point made by Mr. Koek was that the Rent Assessment Board is in truth not a Court at all, or at any rate not a Court when acting under Section 10 of the Rent Restriction Ordinance. A Court is a body which hears evidence and upon such evidence adjudicates, passes a decree or order, or possibly grants a licence.

It is not necessary to discuss that question at any length in this case, because the Legislative Council has thought it right to set the matter at rest by Sub-Section 9 of Section 13. That sub-section says "the proceedings of the Board shall be deemed to be judicial proceedings," and there can be no judicial proceedings before a body which is not a Court.

Then the second contention is that the Board has hitherto never heard the application in the presence of the parties: that the proceedings were *ex parte* and that an *ex parte* order or orders made in the absence of one of the parties is always open to review. I do not agree that the Board in fact proceeded *ex parte* within the meaning of the rule at all. Originally the Board did undoubtedly hear the landlord in the absence of the tenant. It was no fault of the President or Members of the Board that this course was pursued. The Board apparently sent a notice calling upon the tenant to come forward and oppose the order sought by the landlord. But the postcard miscarried and as a result the tenant was ignorant of the proceedings. The President and members of the Board not unnaturally thought that the tenant was too indifferent to appear and contest the proceedings and they, therefore, very naturally heard the landlord and gave judgment in his favour.

Then a gentleman, a Counsel, Mr. Tampoe Phillips, wrote to the President of the Board a letter in which he reflects upon the procedure. The President referred the matter to his colleagues and they decided to re-hear. Up to that stage the Board were probably quite right. They had not yet heard the tenant and undoubtedly, the tenant had a right to be heard. Mr. Tampoe Phillips duly appeared before the Board, and the President called upon him to present his case. He said "It is not convenient for me to present my case to-day. My client is not here. I am not fully instructed so I cannot argue. I cannot produce evidence." The Board then resolved to abide by the Order which they had made before.

Later a second application for re-hearing was made and the Board being obviously very anxious not to commit themselves to an Order which might possibly work a hardship upon the tenant gave permission to him to present his case. When the day fixed for such review or re-hearing arrived objection was taken by Mr. Battishill, counsel for the landlord, that there was no power on the part of the Board to re-hear. The Board upheld this objection. In my opinion the resolution of the Board upholding the objection of Mr. Battishill was perfectly right. It is the policy of the law that Tribunals shall not review or re-hear cases. If they were at liberty to do so there would never be an end to judicial proceedings at all.

It seems to me, the policy of the law being to restrain Tribunals from re-hearing after they have decided in the presence of the parties or after giving the parties the fullest opportunity of